

BEFORE ED ARGENBRIGHT, SUPERINTENDENT OF

PUBLIC INSTRUCTION FOR THE STATE OF MONTANA  
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IN RE: THE APPEAL OF

BOARD OF TRUSTEES OF FLATHEAD  
COUNTY SCHOOL DISTRICT NO. 5

DECISION AND ORDER

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This appeal stems from a decision rendered by Wallace D. Vinnedge, County Superintendent of Schools, Flathead County, rendered on March 3, 1981, ordering the reinstatement of Neil Hart, a tenure teacher. The appellant, Flathead County School District No. 5, Board of Trustees, filed a timely notice of appeal. This matter was noticed for submission to the State Superintendent and briefs having been received and oral argument not having been requested, this matter is deemed submitted to the Superintendent for decision.

Neil Hart was a tenure teacher in the Kalispell school system for twenty-three years (23) years, during which time he taught at the Kalispell Junior High School, approximately thirteen (13) years. By letter dated December 8, 1975, the then Principal of Kalispell Junior High School, warned Hart, concerning an incident of physical abuse to a student. On May 27, 1977, Mr. Patrick T. Hayden, then School District No. 5 Superintendent, warned Mr. Hart that, "any future exercise of physical punishment on your part, that exceeds the limits of the law, good judgment, or Board policy, will result in disciplinary action by the Board, including the strong possibility of dismissal."

On February 3, 1981, the Trustees of School District No. 5 delivered a letter to Hart stating, "an intent to dismiss from employment for unfitness and violation of adopted policies which charged that:

1. On January 16, 1981, during your fourth (4th) period Biology class, you pulled Heath Halden's hair. The mother called to inform

the school of the hair pulling incident, and that t had left a welt.

2. On January 20, 1981, during a third (3rd) period study hall which you supervised, you struck Randy Birky on the head with your hand.

3. On January 22, 1981, during your third (3rd) period study hall, you used physical force, by grabbing Cary Snyder by the shirt, forcing him into the wall and an arm lock to physically take him to the office."

Following the delivery of this letter, a hearing was held before the Board of Trustees for School District No. 5, on February 27, 1981, during which time testimony was received from both sides.

After hearing the testimony, the County Superintendent made detailed findings with regard to each of the three (3) incidents complained of in the Trustees' February 3, 1981 letter. After making these detailed and comprehensive findings, the County Superintendent concluded that the incidents of January 16, 1981, January 20, 1981, and January 22, 1981, were not of sufficient nature of corporal punishment to justify dismissal of the teacher, even in view of the reprimands made in 1975 and 1977.

#### SCOPE OF REVIEW

This is an Administrative Appeal, before the State Superintendent of Public Instruction and is governed by the Montana Administrative Procedure Act, § 2-4-704, M.C.A. which provides:

Standards of Review. (1) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency not shown in the record, proof thereof may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(2) The court may not substitute its judgement for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify

the decision if substantial rights of the appellant have been prejudiced because of the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (g) because findings of fact, upon issues essential to the decision, were not made although requested.

Also see, Standard Chemical Manufacturing Company vs. Employment Security Division (1980) \_\_\_\_ Mont. \_\_\_\_, 37 St. Rep. 105 and Martinez v. Yellowstone County Welfare Department (1981) \_\_\_\_ -Mont. P. 2d. \_\_\_\_ 38 St. Rep. 474, which provides that it is not the duty of the reviewing administrator to substitute his judgment for that of the administrative decision maker.

Student discipline, implementation of Board Policy, and teacher discipline are all matters of local concern, which I intend to emphasize, not diminish during my administration. At the same time, I am bound by state law to review the evidence presented to the County Superintendent and to determine whether or not his decision was based on substantial evidence. If I am to reverse his finding's, I must do so only if they are clearly erroneous or constitute an abuse of discretion.

The transcript of these proceedings plainly indicates that the Flathead Superintendent conducted a very professional and thorough hearing. Both sides had every opportunity to present their cases, and I am sure that the matter presented to the County Superintendent was one that took a great deal of time and effort to decide.

I cannot find that his decision was clearly erroneous in view of the facts presented or that his decision constituted an abuse of discretion.

There was substantial evidence to support the decision reached by

the Flathead County Superintendent of Schools and I cannot, nor will I substitute my own opinions after reviewing this "cold" record, for the one who sat in front of the witnesses, viewed their demeanor, and heard their words and observed their reactions during the entire proceeding. The decision of the Flathead Superintendent of **Schools** is therefore affirmed.

DATED **SEPTEMBER 23**, 1981.